IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5233 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Petitioner(s)

Versus

RAMESHBHAI RAMJIBAI PATEL - Respondent(s)

==========

Appearance :
MR. D.A. DESAI-AGP for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR TR MISHRA for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged the legality of an Award dated 16.08.2004 passed by the Labour Court, Bharuch. The respondent workman had raised an industrial dispute challenging his

termination w.e.f. 14.08.1991. It was the case of the workman that he was discharging his duties as a Truck(Dumper) driver since February 1981 and his services were terminated in August 1991 without following any procedure prescribed under the law. It was the case of the workman that he had worked for more than 240 days in 12 calendar months preceding his termination. On the other hand, the case of the petitioner was that the workman himself had stopped coming for work.

2. The Labour Court in its impugned Award observed that the workman had worked for 305 days in the year 1990 and 177 days in the year 1991. The Labour Court concluded that the workman had worked for more than 240 days during the relevant period and his service was terminated without following the provisions of Section 25 F of the Industrial Disputes Act. In fact, the Labour Court observed that there is no dispute about the fact that the workman had worked for more than 240 days during the relevant period.

2.1 With respect to the defence of the petitioner regarding the abandonment of service by the workman,

the same was discarded by the Labour Court.

2.2Eventually, the Labour Court was pleased to set aside the termination of the workman. He was directed to be reinstated in service with continuity and 30% backwages.

3.The learned AGP Shri D. A. Desai, appearing for the petitioner was unable to dislodge the finding of the Labour Court that the workman had worked for more than 240 days during the relevant period of 12 months preceding the date of the termination. The version of the petitioner that the workman had voluntarily stopped coming for work was not accepted by the Labour Court. There is nothing on record to upset this finding of fact. Ultimately therefore, when the workman had proved that he had worked for more than 240 days during the relevant period and when requirements of Section 25F of the Industrial Disputes Act were not followed before terminating the service, the Labour Court was justified in setting aside the termination. Direction for payment of 30% backwages also being reasonable, calls for no interference.

4.In the result, the Award of the Labour Court is upheld. Petition is rejected. Rule discharged.

(Akil Kureshi,J)

*bjoy